

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lauren Kerstein	Team: Squad #7	CCRB Case #: 201500673	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 01/24/2015 1:50 AM	Location of Incident: Rider Avenue and East 138th Street; 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 7/24/2016	EO SOL 7/24/2016	
Date/Time CV Reported Wed, 01/28/2015 3:52 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/29/2015 3:52 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Nesto	03785	954173	PBBX
2. POM John Zanca	16771	952366	040 PCT
3. POM Sherrod Stuart	28290	952271	040 PCT
4. An officer			
5. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Sastri Drysdale	2556	941684	PBBX
2. POM Kevin Dempsey	22807	953813	PBBX
3. POM Raymon Martinez	07415	955138	PBBX
4. SGT John Ferrara	01746	925280	040 PCT
5. POM Ruben Serrano	13592	951235	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sherrod Stuart	Abuse: PO Sherrod Stuart searched the car in which § 87(2)(b) was an occupant at the intersection of Rider Avenue and East 138th Street in the Bronx.	
B.POM John Zanca	Abuse: PO John Zanca searched the car in which § 87(2)(b) was an occupant at the intersection of Rider Avenue and East 138th Street in the Bronx.	
C. An officer	Force: An officer used a chokehold against § 87(2)(b) at the intersection of Rider Avenue and East 138th Street in the Bronx.	
D. An officer	Force: An officer restricted § 87(2)(b)'s breathing at the intersection of Rider Avenue and East 138th Street in the Bronx.	
E.POM Sherrod Stuart	Force: PO Sherrod Stuart used physical force against § 87(2)(b) at the intersection of Rider Avenue and East 138th Street in the Bronx.	

Officer(s)	Allegation	Investigator Recommendation
F.POM John Zanca	Force: PO John Zanca used physical force against § 87(2)(b) at the intersection of Rider Avenue and East 138th Street in the Bronx.	
G.POM Sherrod Stuart	Force: PO Sherrod Stuart struck § 87(2)(b) with an asp at the intersection of Rider Avenue and East 138th Street in the Bronx.	
H.POM Michael Nesto	Force: PO Michael Nesto used physical force against § 87(2)(b) inside the 40th Precinct stationhouse.	
I. Officers	Force: Officers used physical force against § 87(2)(b) inside the 40th Precinct stationhouse.	

Case Summary

On January 24, 2015, at approximately 1:50 a.m., § 87(2)(b) was driving his vehicle with passengers § 87(2)(b) and § 87(2)(b) when the vehicle was stopped by PO John Zanca and PO Sherrod Stuart. Additional units, including Sgt. John Ferrara, PO Ruben Serrano and an unknown number of unidentified officers responded shortly thereafter. All of the officers approached § 87(2)(b)'s vehicle. After asking everyone to exit the vehicle, PO Zanca and PO Stuart searched § 87(2)(b)'s vehicle (**Allegations A and B**).

Officers attempted to arrest § 87(2)(b). An officer, who § 87(2)(b) did not see, allegedly wrapped his hand around the front of § 87(2)(b)'s neck, causing his breathing to become restricted for four to five minutes, and later caused him chest pains (**Allegations C and D**). § 87(2)(b) alleged that PO Zanca and PO Stuart punched him in the back of the head, the left side of his face, and around his neck region "hundreds of times" (**Allegation E and F**). PO Stuart then allegedly struck § 87(2)(b) on his legs with an asp more than ten times (**Allegation G**). § 87(2)(b) was eventually handcuffed and charged with an unsafe lane change, disorderly conduct, aggravated unlicensed operation of a vehicle, obstruction of governmental administration, resisting arrest, and assault against a police officer in the second degree.

While in the holding cells at the 40th Precinct stationhouse, § 87(2)(b) was admittedly being disruptive, prompting Sgt. Sastri Drysdale, PO Michael Nesto, PO Kevin Dempsey and PO Raymon Martinez to escort him to another cell. § 87(2)(b) alleged that PO Nesto punched him on the left side of his face multiple times and the other officers also punched and kicked him (**Allegations H and I**). § 87(2)(b) was eventually re-handcuffed and placed into a holding cell by himself. § 87(2)(b) was then re-arrested and charged with assault against a police officer in the second degree, assault with intent to cause serious physical injury to an officer in the second degree, and harassment in the second degree.

§ 87(2)(b) was later taken to § 87(2)(b) because he was complaining of chest pains. He sustained bruises to the right side of his face, neck, and upper back.

This case was originally assigned to Inv. Krista Kano, and on February 27, 2015, the case was re-assigned to Inv. Lauren Kerstein upon Inv. Kano's departure from the Agency.

Mediation, Civil and Criminal Histories

§ 87(2)(b) has not filed a Notice of Claim with regard to this incident (B.R. 07). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (B.R. 03).
- PO Nesto has been a member of the service for two years, and has been the subject of two allegations from one prior case that is still pending investigation. § 87(2)(g) (See Officer History).
- PO Stuart has been a member of the service for three years and has been the subject of 12 prior allegations stemming from five prior complaints, one of which is still pending investigation. None of the allegations PO Stuart has been the subject of have been substantiated. § 87(2)(g) (See Officer History).

- PO Zanca has been a member of the service for three years and has been the subject of nine allegations stemming from three previous complaints, all but one of which are still pending investigation (See Officer History):
 - In CCRB# 201206268, a civilian alleged that PO Zanca pushed a prisoner into a vehicle and punched him three times. The allegation was closed as victim unavailable.

Attempts to Contact Civilians

- § 87(2)(b) and § 87(2)(b) all of whom were passengers in § 87(2)(b)'s vehicle at the time of the incident, provided phone statements to the investigation but were uncooperative with the CCRB's attempts to schedule them for verified statements.
- Contact was never established with the other vehicle passenger, § 87(2)(b) because none of the civilian parties were able to provide contact information for him, and the investigation did not have enough information about him to conduct database searches.

Arrest Reports

- § 87(2)(b)'s arrest report from the incident at Rider Avenue and East 138th Street notes that when the officers attempted to place § 87(2)(b) in handcuffs, he resisted arrest by swinging his arms and placing his hand around PO Zanca's neck. PO Zanca noted that as a result of § 87(2)(b)'s resistance, he experienced pain and redness to his neck. No physical force is listed as being used to handcuff § 87(2)(b) and § 87(2)(b)'s physical condition is listed as apparently normal (NYPD Documents 02).
- § 87(2)(b)'s arrest report from the incident at the stationhouse notes that he struck PO Nesto in the face and then shoved him into a metal cell door. As a result, PO Nesto sustained a laceration to his lip, a concussion and a large laceration, swelling, and pain to his head. § 87(2)(b)'s physical condition is listed as apparently normal, and no physical force is listed as being used to handcuff § 87(2)(b) (NYPD Documents 02).
- The Unusual Occurrence Report (UF-49) notes that § 87(2)(b) was in the holding cell behaving combative, irate, and belligerent, and when Sgt. Drysdale, PO Nesto, PO Dempsey and PO Martinez went to remove him, he began punching PO Nesto in the face and head. The report noted that PO Nesto was also pushed against the cell door, causing him to bang his head. When the Duty Captain arrived to interview § 87(2)(b) about the incident, he requested medical attention for chest and back pain but did not indicate how the pain was caused (NYPD Documents 05).

Findings and Recommendations

Allegations Not Pleaded

Abuse of Authority

- § 87(2)(b) alleged in his unverified phone statement that the officers approached the vehicle with their guns drawn (B.R. 09). Given that § 87(2)(b) did not make a verified statement and § 87(2)(b) did not make this allegation, it has not been pled.
- § 87(2)(b) alleged in his unverified phone statement that all the occupants of the vehicle were searched, and § 87(2)(b) alleged in his unverified phone statement that they were all frisked (B.R. 09, B.R. 11). § 87(2)(b) denied in his unverified phone statement that anyone was frisked or searched (B.R. 10). In his initial phone statement, § 87(2)(b) stated that everyone in the vehicle was searched, but he did not make this allegation in his in-person statement. Therefore, frisk and search allegations against the vehicle occupants have not been pled (B.R. 08).

- In his initial phone statement, § 87(2)(b) alleged that an officer threatened him with the use of force at § 87(2)(b) (B.R. 08). Since § 87(2)(b) did not make this allegation during his in-person statement, this allegation has not been pled.
- In his in-person statement, § 87(2)(b) alleged that he asked PO Nesto for medical treatment but PO Nesto ignored him (See § 87(2)(b)'s CCRB Interview). Given that § 87(2)(b) was eventually taken to § 87(2)(b) Center to receive medical treatment, this allegation has not been pled.

Discourtesy

- § 87(2)(b) alleged in his unverified phone statement that an officer stated, “Get the fuck out of here and go home” to him, § 87(2)(b) and § 87(2)(b) (B.R. 09). Since § 87(2)(b) did not allege this and § 87(2)(b) did not make a verified statement, this allegation has not been pled.

Explanation of Subject Officer Identification

- § 87(2)(b) identified PO Zanca, PO Stuart and PO Nesto each by name and attributed specific allegations to each of them. Each officer also acknowledged their interaction with § 87(2)(b). Therefore, allegations A, B, E, F, G and H have been pled in accordance with § 87(2)(b)'s statement.
- § 87(2)(b) was unable to describe the officer who allegedly used a chokehold against him, which caused his breathing to become restricted, and no other civilian witnessed an officer do this. All officers interviewed denied choking § 87(2)(b) or witnessing another officer do so. In addition, the investigation was unable to identify the other police units that responded to the scene because PO Zanca, PO Stuart, Sgt. Ferrara and PO Serrano were the only units that noted their arrival (NYPD Document 06). Therefore, these force allegations have been pled against “an officer.”
- With the exception of PO Nesto, § 87(2)(b) was only able to describe the officers who punched and kicked him at the stationhouse as four white, Hispanic or black male officers. The Unusual Occurrence Report, prepared by Captain Brian McCaughey, identified Sgt. Drysdale, PO Nesto and PO Dempsey as the officers who transferred him to a different cell. Though these officers are identified, their specific roles are unknown, and since their individual identities did not impact the recommended allegation disposition, this allegation has been pled against “officers.”

Allegation A: Abuse of Authority – PO Sherrod Stuart searched the car in which § 87(2)(b) was an occupant at the intersection of Rider Avenue and East 138th Street in the Bronx.

Allegation B: Abuse of Authority – PO John Zanca searched the car in which § 87(2)(b) was an occupant at the intersection of Rider Avenue and East 138th Street in the Bronx.

§ 87(2)(b) alleged that he had four passengers in his minivan when PO Zanca and PO Stuart stopped his vehicle. § 87(2)(b) denied that he or his four friends made any movements, and indicated to the CCRB that they were especially careful not to make any unnecessary movements, on account of the recent police shootings.

After stopping § 87(2)(b)'s vehicle for an unsafe lane change, both PO Zanca and PO Stuart stated they each saw § 87(2)(b)'s vehicle moving after they executed the stop. PO Zanca stated that he saw eight to ten people inside of the vehicle and a lot of the people were “jumping around and moving around” in the back of the vehicle, though he was unable to specifically describe the movements he observed. This caused PO Zanca to believe that the civilians were attempting to conceal a weapon (See PO Zanca's interview). PO Stuart confirmed that the vehicle

itself was shaking, but could not see inside to determine what was specifically causing the movement (See PO Stuart's interview).

As PO Zanca approached the driver's side of the vehicle, he continued to observe movement inside the vehicle, but despite being closer to the vehicle and having his flashlight out, PO Zanca was still unable to specifically describe the movements he observed inside the vehicle. As PO Stuart approached the passenger side of the vehicle, he saw multiple individuals ducking down and placing their hands behind the seats and under the seats. These furtive movements observed by PO Stuart were not localized to one area but were happening everywhere inside the vehicle. After observing this, PO Stuart believed that the occupants in the vehicle were attempting to conceal a weapon. Shortly after PO Zanca and PO Stuart conducted the traffic stop, PO Serrano and Sgt. Ferrara arrived at the location. PO Serrano stated that PO Zanca informed him that the civilians in the vehicle looked like they were picking things up and placing them back down. However, upon approach of the driver's side, PO Serrano did not observe these movements firsthand and attributed the movements he did see, the civilians looking around, to a natural and nervous reaction to the officers' presence.

The officers asked all of the occupants to exit the vehicle because, according to PO Zanca, "...any of the occupants at any moment could have reached for a weapon" and "to make sure there were no weapons inside the vehicle." PO Zanca indicated that he searched underneath the seats, on top of the seats, and on the floor of the vehicle after everyone was removed. PO Zanca could not recall if he searched inside of the middle console, but denied searching inside of the glove compartment. PO Stuart indicated that he searched underneath the front seats, between the front and back seats and on top of and underneath the back seats. No weapon was recovered.

Sgt. Ferrara and PO Serrano both could not recall if § 87(2)(b)'s vehicle was searched but each denied searching the vehicle themselves.

After a vehicle's occupants are removed and frisked to eliminate any immediate threat to an officer's safety, a vehicle search is not permitted in the absence of probable cause unless the likelihood of a weapon in the vehicle is substantial and the danger to the officers is actual and specific. People v. Carvey, 89 N.Y.2d 707 (1997) (B.R. 01).

§ 87(2)(g)

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Allegation C: Force – An officer used a chokehold against § 87(2)(b) at the intersection of Rider Avenue and East 138th Street in the Bronx.

Allegation D: Force – An officer restricted § 87(2)(b)'s breathing at the intersection of Rider Avenue and East 138th Street in the Bronx.

§ 87(2)(b) alleged that, while officers tried to get him to the ground, an unknown officer wrapped his arm around the front of § 87(2)(b)'s neck, thus causing his breathing to be restricted.

As discussed in the subject officer identification section, since § 87(2)(b) was unable to describe the officer who committed the allegation, no other civilian present witnessed this action, and PO Zanca, PO Serrano, Sgt. Ferrara and PO Stuart denied committing the allegation or observing another officer do so, the investigation was unable to identify the subject officer.

§ 87(2)(g)

Allegation E: Force – PO Sherrod Stuart used physical force against § 87(2)(b) at the intersection of Rider Avenue and East 138th Street in the Bronx.

Allegation F: Force – PO John Zanca used physical force against § 87(2)(b) at the intersection of Rider Avenue and East 138th Street in the Bronx.

Allegation G: Force – PO Sherrod Stuart struck § 87(2)(b) with an asp at the intersection of Rider Avenue and East 138th Street in the Bronx.

The officers' and § 87(2)(b)'s account of his initial handcuffing depict a violent physical struggle. Alternatively, the additional vehicle passengers' unverified statements portray a minor physical struggle.

§ 87(2)(b) alleged that PO Zanca and PO Stuart both punched him in the head, face, and neck "hundreds of times," and that PO Stuart struck his legs with an asp more than ten times. After the struggle, § 87(2)(b) stated that he had a laceration on his leg and shoulder, and was bleeding as a result (See § 87(2)(b)'s CCRB interview).

Conversely, Sgt. Ferrara stated that after exiting his vehicle, § 87(2)(b) picked up an unidentified officer and threw him against his vehicle's door, causing a dent. PO Zanca and PO Stuart both stated that § 87(2)(b) simultaneously grabbed each of them by the front of their necks, thereby restricting the officers' breathing. After unsuccessful attempts to get § 87(2)(b)'s hands off of their necks, PO Stuart stated that he hit § 87(2)(b) once in the leg with his asp, which caused them all to fall to the ground, and for § 87(2)(b) to release his hold on their necks. While trying to handcuff § 87(2)(b) on the ground, the officers stated that he tried to punch them. The officers denied observing any physical injuries on § 87(2)(b) and denied that he complained of any injuries. PO Zanca could not recall if he punched § 87(2)(b) and he did not observe any other officer punch § 87(2)(b). PO Stuart and Sgt. Ferrara both denied punching § 87(2)(b) or seeing another officer punch § 87(2)(b) (See PO Zanca, Sgt. Ferrara and PO Stuart's interviews).

§ 87(2)(b)'s arrest report, which was prepared by PO Zanca, states that § 87(2)(b) resisted arrest by flailing his arms and grabbing PO Zanca by the neck. It states that as a result, PO Zanca sustained redness around his neck and experienced pain.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was transported to § 87(2)(b) several hours after the incident. § 87(2)(b) complained of chest pains and was observed to have multiple hematomas and bruises to the right side of his head, face, upper back and shoulders. His medical records did not support his claim that he had a laceration or bruise on his leg. § 87(2)(b) told medical personnel that he had been assaulted by police officers but did not differentiate whether the injuries he sustained were from his initial arrest or a subsequent stationhouse incident. Medical personnel hypothesized that his chest pains were caused by the physical strain of combatting the police, and blunt force trauma. In his arrest photo, slight redness can be seen on § 87(2)(b)'s right cheek (B.R. 04).

§ 87(2)(b), § 87(2)(g)

The arrest report that was prepared by PO Zanca supports his claim that § 87(2)(b) grabbed him by his neck, but there was no supporting photo evidence of the bruising to his neck that § 87(2)(b) allegedly caused. Furthermore, although PO Stuart alleged he was also grabbed by the neck, he reportedly did not see § 87(2)(b) grab PO Zanca by the neck, despite PO Zanca describing § 87(2)(b) simultaneously choking the officers, each with one of his hands. Additionally, the arrest report narrative does not mention PO Stuart's claim that he was also choked, or Sgt. Ferrara's claim that § 87(2)(b) threw an officer against his vehicle. Had § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation I: Force – Officers used physical force against § 87(2)(b) inside the 40th Precinct stationhouse.

PO Nesto stated that § 87(2)(b) had to be moved to a different holding cell because he was screaming and kicking, punching the walls of the cell, and throwing plastic bottles around the cell. When PO Nesto, Sgt. Drysdale, PO Dempsey, and PO Martinez went in the cell to shackle his legs, PO Nesto grabbed § 87(2)(b)'s arm, at which point § 87(2)(b) punched PO Nesto in the face. Immediately thereafter, § 87(2)(b) reportedly advanced towards PO Nesto a second time, and PO Nesto countered this by punching § 87(2)(b) on the side of his face. PO Nesto also noted in his CCRB interview that he is only 5'7" tall and 165 pounds, while § 87(2)(b) is 5'11" tall and 250 pounds (See PO Nesto's CCRB interview).

According to the Unusual Occurrence Report, prepared by Capt. McCaughey, Sgt. Drysdale, PO Martinez and PO Dempsey were able to handcuff § 87(2)(b) “without incident” after he attacked PO Nesto. Capt. McCaughey interviewed the only other prisoner in the cells at the time, Vicente Leonides, who stated that he was sleeping and did not witness the incident (NYPD Document 05).

PO Nesto was taken to § 87(2)(b), and diagnosed with a concussion. PO Nesto provided a photo of his injuries, depicting lacerations, swelling, and bruising behind his left ear and dried blood near the top of his head, which he indicated was photographed ten minutes after the incident (B.R. 05). PO Nesto stated that he was out of work for approximately ten days due to his injuries (See PO Nesto's statement).

§ 87(2)(b), § 87(2)(g)

